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CITATIONS

Statute and regulations:

Section 2 (a) of the Act of June 28, 1940 (54 Stat. 676), as amended by the Act of May 31, 1941 (55 Stat. 236), and by Title III of the Second War Powers Act of March 27, 1942 (56 Stat. 177), 50 U. S. C. App., Supp. IV, 633	2
General Ration Order No. 8, as amended, 8 F. R. 9626, 9 F. R. 1325, 2746:	
Section 2.5	3, 5, 7, 8, 9, 10
Section 2.6	3, 8, 9, 10
Ration Order 5C, 7 F. R. 9135:	
Section 1394.8211	6

(1)



In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 246

JACK TOBIN, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH
CIRCUIT*

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 28-31) is reported at 149 F. 2d 534.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered May 21, 1945 (R. 32), and a petition for rehearing was denied June 15, 1945 (R. 33). The petition for a writ of certiorari was filed July 20, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTION PRESENTED

Whether, under an information charging that petitioner knowingly and unlawfully possessed and transferred gasoline ration coupons which he knew were not legally acquired and transferred by him in accordance with a ration order and which were alleged to be forged and counterfeited, it was necessary to prove that petitioner knew that the coupons were spurious.

STATUTE AND REGULATION INVOLVED

Section 2 (a) of the Act of June 28, 1940 (54 Stat. 676), as amended by the Act of May 31, 1941 (55 Stat. 236), and by Title III of the Second War Powers Act of March 27, 1942 (56 Stat. 177), 50 U. S. C. App., Supp. IV, 633, provides in part:

(2) * * * Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such manner, upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense.

* * * * *

(5) Any person who willfully performs any act prohibited, or willfully fails to perform any act required by, any provision of this subsection (a) or any rule, regulation, or order thereunder, whether heretofore or hereafter issued, shall be guilty of a misdemeanor, and shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

* * * * *

(8) The President may exercise any power, authority, or discretion conferred on him by this subsection (a), through such department, agency, or officer of the Government as he may direct and in conformity with any rules or regulations which he may prescribe.

The pertinent provisions of General Ration Order No. 8, as amended (8 F. R. 9626, 9 F. R. 1325, 2746), issued by the Office of Price Administration, are as follows:

Section 2.5. Acquisition, use, transfer or possession of counterfeited or forged ration document. (a) No person shall acquire, use, permit the use of, transfer, possess or control any counterfeited or forged ration document under circumstances which would be in violation of section 2.6 if the document were genuine or if he knows or has reason to believe that it is counterfeited or forged.

Section 2.6. Acquisition, use, transfer or possession of ration document. No person

shall acquire, use, permit the use of, possess or control a ration document, except the person, or the agent of the person, to whom such ration document was issued, or by whom it was acquired in accordance with a ration order or except as otherwise provided by a ration order. No person shall use or transfer a token or other ration document except in a way and for a purpose permitted by a ration order.

STATEMENT

Petitioner was charged in a two-count information filed in the United States District Court for the Northern District of Illinois with unlawfully possessing and transferring gasoline ration coupons (R. 2-6). Count 1 of the information, after tracing the authority of the Price Administrator to issue General Ration Order No. 8 and setting forth the text of Sections 2.5 and 2.6, alleged in paragraph 7 that on June 19, 1944, petitioner "did * * * knowingly, willfully and unlawfully have possession and control of" 660 gasoline ration coupons, "which ration documents were not legally acquired by him personally or as agent for another in accordance with" any ration order. Paragraph 8 alleged that the coupons in question were "forged and counterfeited," averred that when petitioner had possession and control of them he "knew that said coupons were not legally acquired by him personally or as agent

for another from the Office of Price Administration or held by him under authority" of any ration order, and concluded that petitioner's act was in violation of Section 2.5 of General Ration Order No. 8 and the Second War Powers Act. (R. 3-5.) The second count, after incorporating by reference the preliminary allegations of Count 1, alleged in paragraph 2 that petitioner knowingly and unlawfully transferred to the Standard Oil Company of Indiana 458 gasoline ration coupons, not in accordance with any ration order. Paragraph 3 alleged that these coupons were forged and counterfeited, and that, at the time of the transfer, petitioner "knew that said coupons were transferred by him in a way and for a purpose not authorized by" any ration order, in violation of Section 2.5 of General Ration Order No. 8 and the Second War Powers Act. (R. 5-6.)

A jury trial having been waived, petitioner was found guilty on both counts, and he was sentenced generally to imprisonment for one year and to pay a fine of \$1,374 and costs (R. 15). On appeal to the Circuit Court of Appeals for the Seventh Circuit, the judgment was affirmed (R. 32).

The pertinent evidence adduced at the trial may be summarized as follows:

Petitioner operated a gasoline station in Chicago, Illinois (R. 13). On various dates in June, 1944, he had in his possession a quantity of coun-

terfeit gasoline ration coupons which he transferred to the Standard Oil Company as ration currency in exchange for gasoline delivered to him during that month (R. 9, 10, 11). On or about June 24, 1944, two agents of the United States Treasury Department called petitioner to their office in Chicago. The agents testified that at the interview they showed petitioner several of the ration coupons involved, which had been affixed to gummed sheets,¹ that petitioner stated that the coupons were part of a supply purporting to be ration currency for 2,000 gallons of gasoline which he had bought from one Benjamin Workman at the rate of 6 or 8 cents per gallon, and that he had turned them in to the Standard Oil Company when purchasing gasoline (R. 11, 12). The coupons were proved to be counterfeit (R. 12, 13). They were introduced in evidence without objection, as were also a number of duplicate sales slips, showing the receipt by petitioner of gasoline from the Standard Oil Company in exchange for the coupons (R. 9, 10, 11).

Petitioner in his testimony acknowledged that he went to the office of the agents, but denied that he had entered into any conversation with

¹ Under O. P. A. regulations (Ration Order 5C, Section 1394.8211, 7 F. R. 9135), before a dealer turned in ration coupons to his gasoline supplier he was required to affix them to a sheet (O. P. A. Form R-120) provided for that purpose. (See R. 9.)

them, and asserted that he had not obtained gasoline coupons from Workman or anyone else except customers of his station in due course of business. He admitted that his signature appeared on the gummed sheets to which the coupons were attached. (R. 13, 14.)

ARGUMENT

1. Petitioner contends that the legal effect of the information as drawn was to charge him under Section 2.5 of General Ration Order No. 8 (*supra*, p. 3) with possessing and transferring gasoline ration coupons which he knew were counterfeit, and he argues that inasmuch as no proof of knowledge on his part as to the spurious character of the coupons was offered, no crime was proved. Alternatively, he contends that if the Government was not required to prove that he knowingly possessed and transferred counterfeit coupons, then no crime was charged by the information (Pet. 18-22, 25-27). We submit, however, that petitioner has misconstrued Section 2.5 and the charges of the information.

Although it is true, as petitioner argues (Pet. 19, 25), that Section 2.5 deals only with forged or counterfeited ration documents, that section, as the court below pointed out (R. 30), denounces as distinct offenses (1) the acquisition, use, possession, or transfer of any spurious ration document under circumstances which would be in

violation of Section 2.6 if the document were genuine, and (2) the acquisition, etc., of any document which the person knows or has reason to believe is counterfeited or forged. The information does not allege that petitioner possessed and transferred the ration coupons, knowing or having reason to believe that they were spurious, as petitioner contends (see Pet. 18, 22, 25). Rather, both counts are laid under the first part of Section 2.5. For paragraph 7 of Count 1 (R. 4) and paragraph 2 of Count 2 (R. 5) clearly allege, substantially in the language of Section 2.6, to which Section 2.5 refers, that petitioner knowingly possessed certain coupons which were not legally acquired by him, and that he knowingly transferred described coupons illegally and not in accordance with a ration order. Paragraphs 8 and 3, respectively, of the two counts allege, as is required by the definition of the offense contained in the first part of Section 2.5, that the coupons in question were forged and counterfeited. But these paragraphs do not charge that petitioner knew the spurious character of the documents. To the contrary, in respect of the coupons involved in the first count, the only specific charge of scienter is found in the allegation of paragraph 8 that petitioner knew that the coupons were not legally acquired by him personally or as agent for another from the

O. P. A. and were not held by him under the authority of a ration order (R. 4-5); and in paragraph 3 of the second count it is alleged that petitioner knew that the transfer of the coupons to which it referred was accomplished in a way and for a purpose not authorized by a ration order (R. 5-6).

It is thus clear that the second part of Section 2.5, prohibiting any use of a ration document which the holder knows is forged or counterfeited, is not involved in this case and it was therefore unnecessary to establish that petitioner had such knowledge, but only that he knowingly possessed and transferred the coupons in a manner and for purposes prohibited by Section 2.6 and the gasoline rationing regulations.

Petitioner's argument to the contrary is based in part upon a distorted construction of Section 2.5 as requiring in every case involving counterfeit documents, proof that the accused knew of their spurious character, and his contention in this regard is predicated upon the fact that an innocent acquisition of counterfeit coupons in a lawful way is not violative of either Section 2.5 or 2.6 (see Pet. 18-22). But, as we have shown, Section 2.5 prohibits not only any knowing use of counterfeit documents, but any use of such documents acquired in circumstances which would be violative of Section 2.6 if the documents were

genuine, irrespective of whether the holder knows of their spurious character.

The Government does not contend, as petitioner seems to think (see Pet. 22-25), that the allegations as to the counterfeit character of the coupons are surplusage which were not required to be proved. We agree that these allegations properly describe an element of the offense as defined by Section 2.5; and they were proved by expert testimony (R. 12-13). But such proof was all that was required in this respect, for, as we have seen, petitioner was charged only with possessing and transferring unlawfully acquired coupons which were counterfeit in fact, and not with trafficking in coupons which he knew were counterfeit.

In this view of Section 2.5 and the charges of the information, the evidence is amply sufficient to sustain petitioner's conviction. He admitted to two government agents that the coupons in question were part of a batch he had purchased from another and that he had used them in procuring gasoline from his supplier, the Standard Oil Company. Plainly, therefore, he did not acquire the coupons under circumstances consonant with Section 2.6 or any other ration order (compare Pet. 12, 19-20), and his possession and transfer of them fell squarely within the prohibitions of Sections 2.5 and 2.6.

CONCLUSION

The decision below is correct, the case does not present any question of general importance, and there is no conflict with decisions of other circuit courts of appeals or of this Court. It is respectfully submitted, therefore, that the petition for a writ of certiorari should be denied.

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SEPTEMBER 1945.